



**Statement for the Record  
By Gerald L. "Jerry" Smith, II, FPEM, President  
Florida Emergency Preparedness Association**



**Field Hearing before the  
House Committee on Homeland Security's  
Subcommittee on Emergency Preparedness, Response, and Communications**

**"Weathering the Storm: A State and  
Local Perspective on Emergency Management"**

**June 10, 2011**

Chairman Bilirakis, Ranking Member Richardson, and distinguished members of the Subcommittee, I am Jerry Smith, the Director of Emergency Management for Lake County, Florida. I currently serve as the President of the Florida Emergency Preparedness Association, and I am providing this statement on critical local and state Emergency Management issues on behalf of the Association and the numerous agencies and members it represents. I have been a local government emergency manager for nearly seven years, during which I managed two major presidential declarations, Tropical Storm Fay in 2008 and the Groundhog Day Tornadoes in 2007. Much like the recent horrific experiences of my colleagues across the nation, my community experienced loss of life, multiple injuries, significant damages and disruption of life as we knew it from an outbreak of multiple tornadoes. It is perhaps this experience that has most shaped my current emergency management career and perspective. In addition to these, there were also numerous other Lake County Emergency Operations Center (EOC) activations. My experience also includes being the State Emergency Response Team Deputy Chief in June, 2010, during the Deepwater Horizon activation in Tallahassee, Florida. Prior to my Emergency Management career, I dedicated fifteen years to Emergency Medical Services, and over twenty-seven years with the Air Force, active duty and reserves. I am currently assigned to the 920th Rescue Wing, Patrick AFB, Florida.

The Florida Emergency Preparedness Association (FEPA) is Florida's only statewide organization dedicated to serving and enhancing all hazards emergency management activities at all levels. Membership is comprised of representatives from local government emergency management agencies, emergency response disciplines, industrial, commercial, educational, military, private, non-profit, tribal and volunteer organizations, and professionals in all career fields who perform emergency management functions.

The primary mission of FEPA is to provide an information and support network among county emergency management directors and partners at the municipal, county, regional, tribal, state and federal government levels. FEPA also ensures coordination and information dissemination to those responsible for emergency preparedness in volunteer and private industry organizations on a host of critical issues.

Florida is fortunate to have a strong and successful Emergency Management program. This is in part due to the Emergency Management, Preparedness and Assistance (EMPA) Trust Fund which

was established by the 1994 Florida Legislature to fund state and local emergency management programs and responsibilities outlined in Chapter 252, Florida Statutes, and Florida Administrative Code 9G.

The EMPA Trust Fund allows counties to fund dedicated local programs which maintain standards of performance. While Florida Statute 252 and Florida Administrative Code 9G outline specific state and local governments' emergency management authorities and responsibilities, we also benefit from numerous other forms of legislation and rules that require all aspects of government in Florida to be engaged in emergency management. Our position is strong counties make a strong state through positive collaboration and coordination with the Florida Division of Emergency Management (FDEM).

Over the past several years I have had several experiences with the Federal Emergency Management Agency (FEMA), from assisting Lake County during a disaster, to working through various planning processes. During the Groundhog Day Tornadoes, FEMA funded and supported the first specifically designated camp for volunteers who came from across the country. Establishing a camp for the volunteers was critical to providing assistance to our impacted citizens and greatly expedited our relief operations.

I have been involved in the catastrophic event planning effort that FEMA provided for the State of Florida, from a "Host Community" perspective. The experience was very useful and it has improved Florida's hurricane preparedness.

After the attacks on 9/11, it was understandable that the focus of the Country would be for terrorism; however, the events which created the need for the Post Katrina Emergency Management Reform Act (PKEMRA) clearly indicated the need for a comprehensive emergency management system across the nation. I believe FEMA is and has been pursuing this goal and is making positive gains. One of these is the requirement for senior FEMA positions to be filled by qualified, experienced emergency managers. This standard should never be altered.

We deeply appreciate the support this subcommittee provides to Florida's emergency management community, and the opportunity to speak before you today. I recognize that the Committee's focus during the hearing today is on the PKEMRA, and I intend to present general testimony associated with that and related topics. It is my assessment that the Federal Emergency Management Agency is complying with the PKEMRA; however, there are some areas that need further collaboration with local emergency management practitioners. My comments are intended to present the local perspective toward that collaboration.

### **Emergency Management Performance Grants (EMPG)**

Florida receives Emergency Management Performance Grant funding from the Department of Homeland Security (DHS), FEMA, based on an annual Congressional Appropriation and federal funding formula. FEPA greatly appreciates the support to maintain the funding levels of EMPG this year, in spite of great pressures to reduce the federal budget.

EMPG, which has been called "the backbone of the nation's emergency management system", constitutes the only source of direct federal funding for state and local governments, to provide basic emergency coordination and planning capabilities for all hazards including those related to homeland security. These funds are used to support and enhance state and local emergency management programs. In Florida, the Division of Emergency Management passes federal

EMPG funds through to county governments to sustain personnel and basic operational expenses. These funds are matched at the local level “dollar for dollar” with non-federal revenues.

EMPG funding is used by county programs to sustain operational costs related to program staffing, Emergency Operation Center and Public Shelter readiness, critical communications and notification systems, emergency planning, training and exercise projects, and public information and education programs. Together these funds (federal and non-federal match) support the “first line of defense” at the local level, for a broad range of hazards and emergencies faced by Florida communities.

As the responsibilities placed on local emergency management programs and personnel continue to expand, federal EMPG dollars are a critical component of Florida’s statewide emergency management system. Without this on-going federal funding stream, Florida’s emergency management programs would not have been able to develop or maintain the local capacity needed for the extended emergency operations required by the unprecedented 2004 and 2005 Hurricane Seasons or the more recent 2010 Haiti Repatriation, H1N1 and Deepwater Horizon events.

The House Appropriations Subcommittee and Full Committee action on the FY 2012 Budget for the Department of Homeland Security allowed the Emergency Management Performance Grant to receive the President's request of \$350 million, a \$10 million increase over FY 2011. This action is significant in the protection of the local programs. However, the bill increased the Administrative Fee that FEMA can keep for program administration to "not to exceed 10 percent".

**If the budget remains at the \$350 million level, and if the 10% Administrative Fee language remains, \$35 million could be retained by FEMA for Management and Administration.**

**This means only \$315,000,000 would be awarded.** Although the \$350 million level appears to sustain critical support for state and local programs, in practice it would be a decrease of about \$14 million from the award amounts in Fiscal Year 2010 and Fiscal Year 2011. It has become practice for the funding for FEMA's Grant Program Directorate and other programs to be funded by the Administrative fee on the grant programs. We respectfully request that this practice be discontinued or the funding level be adjusted to accommodate it without compromising state and local programs.

It is important that FEMA and DHS maintain EMPG as a direct emergency management, all hazards funding source and it is not combined with other homeland security specific grant funding. EMPG must maintain its own unique identity. Please remain vigilant in your protection of this funding and its intended purpose.

### **State Homeland Security Grant Program**

The post 9/11 federal funding provided to Florida under the State Homeland Security Grant Program (SHSGP) allowed the State to escalate its preparedness and prevention capabilities and capacities. Florida continues to implement and refine its State Homeland Security Strategy and county emergency management programs are a critical component of the state strategy. For the last several years, under the Congressional appropriation, funding for law enforcement prevention activities has become a subset of the overall SHSGP, rather than a unique grant funding stream. In Florida, this has created an unintended “competition” between preparedness

and prevention priorities for scarce SHSGP funds. Florida's emergency managers support the current requirement that the majority of SHSGP funds be made available to local programs and projects.

The recent reductions in the Federal Budget that have resulted in reducing Florida's UASI funding will make this competition more intense.

### **Coordination of Federal Response to Emergency Events**

Even without a direct hurricane impact, 2010 proved to be an extremely busy year for the state's local emergency management programs. Florida coordinated a massive repatriation effort in response to the devastating earthquake in Haiti. This effort relied on the expertise and experience of county emergency management programs to directly support federal activities in their jurisdiction. The Deepwater Horizon explosion and resulting oil spill directly threatened Florida's fragile environment and economy and its impacts continue to affect the state today. Each of these events resulted in extended interaction with federal agencies and officials, who have limited experience with the emergency authorities and responsibilities of Florida's sovereign state and local governments, and emergency management programs. To be effective during disaster events, federal agencies and programs and their personnel must become much more engaged in local emergency planning, projects and procedures before emergency events occur. The relationships between Federal and local agencies need to be developed.

In addition to encouraging more direct interaction and understanding of local conditions, Congress must review the current statutory and regulatory requirements of federal agencies and entities, to develop and maintain separate emergency response plans and procedures. Florida's emergency managers recognize and value the need for a specialized response capability for specific hazards. However, the overall direction, control and implementation of emergency protective measures must be designed to recognize and respect local authorities and jurisdictions, and be clearly and consistently communicated across federal agencies. While the procedures to do so are in the National Response Framework, confusion results when a Principle Federal Official for "incidents of national significance" is appointed, such as in the Deepwater Horizon spill, and a Federal Coordinating Officer is used for Stafford Act events. Our position is all events should follow the Stafford Act model. This will provide consistency and more control at the local level.

Several recurring tenets for coordinated emergency response were made evident during Florida's experience with the Deepwater Horizon incident and the massive repatriation effort in Haiti. I list them here briefly as "Lessons Learned" as Congress considers amendments and revisions to existing laws and regulations.

1. Local governments must retain control of protective action decisions made for their jurisdictions.
2. The responsible party, state and federal response officials must respect local government protective action decision making.
3. Local governments must have an "equal" voice in prioritization and allocation of scarce resources.
4. Local government objectives may be very different than Responsible Party or federal objectives. As an example – capping the well or recovering product vs. protecting the beaches.

5. As I mentioned earlier, the Federal response systems must better align with the processes and systems used for other emergencies and disasters.
6. All incidents should follow the Stafford Act model, which would allow the National Response Framework to eliminate the unnecessary position of Principle Federal Official.

Florida has a rich history of providing support for federal disaster responses across the nation, both as a direct asset tasked by federal authorities and as part of coordinated state to state mutual aid. This tradition has the full support of local emergency management programs and personnel and is sure to be continued.

### **ADA Requirements for Shelters/FNSS (Functional Needs Support Services) Document**

A major theme throughout the PKEMRA was direction to FEMA to provide for persons with disabilities and other factors. Unfortunately there was not clear direction to include local Emergency Management practitioners in the development of guidelines. The current "Guidance on Planning for the Integration of Functional Needs Support Services in General Population Shelters" was developed predominantly by staff from FEMA, the Department of Justice (DOJ) and disability advocacy groups. None of these agencies are responsible or have experience with shelter operations. While I recognize the American Red Cross (ARC) was involved, they do not have the fiduciary responsibility to shelter like local emergency managers. I acknowledge the efforts of the FDEM Disability Coordinator in contributing to the document. I also respect and find his involvement with the counties extremely beneficial. However, it is important to note the position is funded by another State agency and is not filled by an emergency management practitioner. A saying utilized by the disability advocacy community is "Nothing about us, without us", but it seems they produced a document without local emergency management practitioners. It is interesting that the PKEMRA was passed in 2006, yet the FNSS document was not distributed until October 2010, over four years later.

Local emergency managers are in full support of individual rights for access and absolutely opposed to any form of discrimination. A major aspect of our planning for disasters is to identify and protect vulnerable populations. This is why we are so frustrated that FEMA did not follow the standard practice of asking for local comments before issuing the FNSS document. There is also mass confusion on the authority of the document. FEMA staff state that it is a guidance document, but also state that DOJ may use it as a compliance document. When FEMA staff were asked to intervene with DOJ for clarification, the request was rejected.

Florida is working diligently to find a way to implement the guidance, **but there is inconsistency in the Department of Justice settlements. Current examples of conflicting settlements are City of Fort Myers, FL, Fairfax County, VA, Town of Swansea, MA, and the City of Los Angeles, CA.** FEPA is most concerned with the on-going legal actions in Broward County, Florida which until resolved we will not have clear direction and cannot move forward significantly until the findings are released.

Recent DOJ actions to strictly apply Americans with Disabilities Act requirements to facilities designated as hurricane evacuation shelters have caused great concern regarding our ability to open, staff and supply shelters in emergency situations. Florida's geography and susceptibility to hurricane related storm surge and extreme winds result in a high demand for shelters with a limited supply of structurally suitable locations. Implementation of recently released FNSS guidance will critically exacerbate Florida's local sheltering capability challenges. Many of the accommodations compiled in the guidance cannot be implemented due to local budget cuts,

layoffs, and exhausted resources. The service level expectations are unrealistic in a disaster environment, especially in the immediate pre-disaster hours in an event such as a hurricane. Personal responsibility should remain at the forefront for all individuals, members of the disabled community, those with medical needs and caregivers.

The ADA laws were designed to assist individuals with access to facilities and services during their daily lives. Disaster situations and the need for an altered standard of care were never considered when these laws were created. However, they are being applied without consideration of this fact.

We as local emergency managers would like to see a collaborative process established to develop realistic solutions that can be developed and applied to Florida emergency management practices, based upon the realities faced during disasters. It recently became evident at the 2011 Governor's Hurricane Conference (GHC) that the FEMA representative, the DOJ representative, and contractor responsible for assembling the document have no concept of hurricane risk sheltering operations at the local level. A comment shared by the DOJ staffer during the training was to eliminate the term "Special Needs". This was very frustrating, as Florida law specifies the Special Needs program and even the PKEMRA utilizes the term with direction to FEMA. Also, at the 2011 GHC, a "round-table" was held with the FEMA Disability Coordinator, an American Red Cross representative and local emergency management practitioners. During the meeting, the efforts in Alabama to utilize the FNSS guidelines after the recent devastating tornadoes were highlighted as a success. **A very important distinction is that those shelters are post event shelters.** Florida emergency managers do not dispute the practicality of post shelters utilizing FNSS guidelines. Our major concern is "hurricane risk sheltering", and it seems that disability advocates and DOJ do not understand the importance of this distinction.

Florida's emergency managers remain committed to doing the right thing, but the right thing has to be doable. Accommodations are necessary for certain citizens during disasters, and Florida is very successful in doing this. The law however, must take into account the realities that exist during these events, and modify the expectations during the hours prior to a disaster, and the early hours and days following a disaster. Our goal now is to hold a summit to educate the disability advocates on the complexities of Hurricane Risk Sheltering, and work with them to find acceptable accommodation methods.

This is not just a Florida issue. Recently, in the International Association of Emergency Managers (IAEM) newsletter, Ms. Lyn Gross, CEM, IAEM-USA Region 10 President, and Director of Emergency Services Coordinating Agency for Brier, Washington, wrote an article relating the numerous challenges all local emergency management programs face. I have had the opportunity to speak with Ms. Gross and I am including that article at the conclusion of my testimony. In discussion with Ms. Gross, she pointed out that in areas with earthquakes, it may not be possible to find a shelter building that is structurally sound following an earthquake, which will comply with ADA requirements.

### **Stafford Act Duplication of Benefits**

Current federal regulations restrict FEMA from releasing Individual Assistance Program client benefit information to local government entities. Without specific information on the amounts, types and characteristics of assistance provided by federal authorities, local and state governments cannot evaluate or verify requests for assistance through their programs to protect

against duplication of benefits. At the local level, we ask for access to client information only to assist our federal partners to reduce potential waste and fraud.

The restriction inhibits the ability of local government officials to effectively and properly meet the needs of their citizens and disperse services to the affected constituents.

### **Emergency Notifications Using Cellular Technology**

FEPA supports the Personal Localized Alerting Network (PLAN) which is to be implemented by the FCC and FEMA at the federal level through broadcasters and other media service providers. This new public safety system will allow customers who own an enabled mobile device to receive geographically-targeted, text-like messages alerting them of imminent threats to safety in their area. Authorized national, state or local government officials will be able to send alerts regarding public safety emergencies, such as a tornado or a terrorist threat, to PLAN-enabled phones. We are anxious to receive additional details on the program and how it will integrate with National Weather Service's (NWS) watch and warning system.

We also support the continued congressional funding of the National Oceanic Atmospheric Administration's (NOAA) Weather Radio program, which is a vital component for notifying the public of all variety of incidents and what protective measures are to be taken to protect themselves.

### **Disaster Housing**

FEPA recognizes the significant challenges poised by disaster events that result in major damages or destruction of a community's existing housing stock. Florida's experience with the widespread damages during the 2004 and 2005 hurricane season reminded us that the broadest complement of disaster housing options must be considered post-event. My personal experience was with the Groundhog Day Tornadoes of 2007.

While the PKEMRA did add utilities to the assistance program in many local areas, rental housing options are extremely limited. Moving survivors great distances from their neighborhoods severely disrupts individuals' ties to employment, schools, health care, houses of worship and other local services, both formal and informal, that sustain them day to day. Housing options that appear untenable during "blue skies" may be viable in a post-disaster environment. These decisions must be made collectively with local officials and must reflect the individual characteristics of the events and the communities affected.

The more recent experience in Alabama and Mississippi are evidence that all disaster housing options must be brought to that table to enable neighbors to remain with their neighbors to regroup, to recover what is left of their possessions, to mourn and comfort collectively to begin to regain some sense of normalcy.

Florida emergency managers support the use of disaster housing trailers on personal properties. However in catastrophic circumstances, we understand it may be necessary to deploy trailers collectively instead of on an individual level.

## **Individual Assistance (IA) and Public Assistance (PA) Recoupment**

FEPA recognizes that FEMA has an important responsibility to be a good steward of public funds and this responsibility includes audits of disaster assistance provided to public entities and individuals. These financial assessments, however, must recognize the circumstances that existed at the time that the funds were provided. Disasters will always present situations that require a balance of getting relief funds to individuals and communities quickly, to help them recover with the requirement to protect against waste, misuse and fraud. As a disaster event progresses, FEMA payment and reimbursement policies often are reviewed, revised and re-tooled. FEPA recognizes that many of these refinements are designed to address the characteristics of the event and often benefit individuals and communities. At a minimum, Federal decisions, advice and recommendations made during the early stages of an event must be better documented, communicated and utilized for audits and evaluations that may take place years after funding is provided.

FEMA is sending out "Notice of Debt" letters to disaster assistance applicants who received federal disaster assistance payments. Letters are being sent from the most recent disasters first. These letters will inform applicants of the amount and reason for their debt, and provide information on how to repay the debt or appeal FEMA's determination.

We understand the pressure to reduce waste and fraud, but spending more time and money to have consistent policies rather than recoupment on the back end would be more practical. It is important to the program and processes to have consistent staffing, and rely less on disaster assistance employees.

## **Florida Emergency Preparedness Association Initiatives**

- **Private Public Partnership Committee:**  
This is a new committee in partnership with FDEM's Private Sector Coordinator that will enable the engagement of the large number of private entities in our membership with public sector emergency management programs. The focus is to explore innovative methods to meet the challenges in the current economic environment.
- **Technology Committee:**  
This committee is working to educate FEPA membership on utilization of social media such as Facebook and Twitter along with being available to assess new technological services available to our membership.
- **Higher Education Committee:**  
This committee is responsible for establishing a process in which Florida college and university Emergency Management academic programs that meet an established criteria receive an endorsement from FEPA. The concept is to provide students with a recognized program which will properly prepare them to be emergency management professionals.
- **Certification Commission:**  
The Certification Commission administers the Association's Certification Program. The committee is responsible for promoting and managing the Associations' Certification Program, the only Florida-specific credentialing program for Emergency Management professionals. FEPA offers three certification levels Florida Emergency Management

Volunteer (FEMV), Florida Associate Emergency Manager (FAEM) and Florida Professional Emergency Manager (FPEM).

- **Training and Development Committee:**  
This committee is responsible for the training and development programs and initiatives of the Association. The Training and Development Committee has established three subcommittees: Training Subcommittee for curriculum development and training initiatives, Instructor Subcommittee for instructor credentials and program monitoring, and the FEPA Academy Subcommittee for planning, administration, and implementation of the Emergency Management Basic and Intermediate Academies.

## **Conclusion**

In closing, I would like to thank you again for the opportunity to share my views and experiences with you at this important event. Florida is fortunate to have been spared the devastation of a direct hit of a hurricane for six years. The 2011 Hurricane Season is predicted to be an extremely active one and will more than likely test Florida's emergency management system, perhaps multiple times and in multiple locations. Should we experience an event it will provide us the opportunity to evaluate more aspects of the PKEMRA. With your continued support and our collective capabilities, capacities and resources, Florida's emergency management professionals stand ready to serve our communities.

**Americans with Disabilities Act: The Next EM Hurdle**

*By Lyn Gross, CEM, IAEM-USA Region 10 President, and Director,  
Emergency Services Coordinating Agency, Brier, Washington*

Recent litigation over the application of the requirements of the Americans with Disabilities Act (ADA) in disasters has brought into focus the next administrative disaster awaiting emergency management practitioners in the United States. It appears that Title 2 of the ADA is being aggressively applied to emergency management without regard to the reality that an altered standard of care applies across the board when disaster strikes. There is a grave potential for real damage to occur if left unaddressed.

This is one issue that is causing emergency managers across the country to lose sleep. In the midst of reduced staffing and budget cuts, we are at a loss, not only because of the complexity of the issue itself, but also because the ability to meet these standards is so far out of reach during a disaster. The ADA laws were designed to assist individuals with access to facilities and services during their daily lives. Having spent a period of time on the physically disabled list myself a few years ago, I can appreciate the effort and the intent. Clearly, disaster situations and the resulting altered standard of care were never considered in these laws, yet they are currently being applied in this arena for lack of anything more realistic having been developed. Surely common sense must kick in somewhere.

While FEMA's *Guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters (FNSS)* provides guidance, the service level expectations remain unrealistic in the disaster environment. Unfortunately, the *FNSS Guidance* appears to have been developed in a vacuum without a comment period, and without input from the practitioners who are expected to implement the program. The general practice of including the emergency management community at the state and local level in the development process seems to have been entirely overlooked.

A staff member in my office has a disabled child and participates in the IAEM-USA Special Needs Caucus. As the parent of a disabled person, she believes that while attention to the matter is important, the expectations of the disability community must be realistic, and personal responsibility should remain at the forefront for individuals and caregivers.

**From Awareness to Operations:**

The current work of the Special Needs Caucus is focused on increasing the awareness of emergency managers regarding the wide scope of "access and functional needs." However, current efforts have not yet attempted to address the operational and logistical issues encountered by local emergency managers. In order to address the issue at hand, we must get past "awareness" and move resolutely into the "operations" required for the task.

What are the basic questions that need to be answered in order to move forward in a meaningful way? What are the minimum standards? If they are the same as day-to-day laws and regulations, then we have no hope of ever being compliant. Perhaps if we can get past the awareness level and obtain answers to some basic questions, we can accomplish the necessary tasks to meet minimal needs.

Across the United States, there are task forces, committees and work groups attempting to address this difficult problem. Yet as an educated and experienced practitioner with many disasters behind me, I've seen much idealism and not much pragmatism applied to the issue. Though my connections are good at the national level, I've not seen even one completed plan in place that addresses this need to the level the *FNSS Guidance* suggests we should. I suggest that this guidance is unattainable in the midst of the logistical challenges and overwhelming resource shortages we face during a disaster event. As an emergency manager looking at the scope of this issue, I want to know if I am going to face legal action for trying, yet missing the mark. If so, why try? We have an "altered standard of care" at every level and in every function in disaster response - why not here?

A solution requires adequate resources and reasonable policy. We all want to do the right thing, but the right thing has to be doable. We support the concept and idea that some special accommodations are necessary during emergencies and disasters. The law however, also must take into account the realities that exist during these events, and modify the requirements and expectations during the early hours and days following a disaster. A glimmer of hope comes from the recent Department of Justice changes to the definition of service animals. Perhaps common sense is coming into play?

I suggest a need to identify the questions and to address legislative clarification, or even change if necessary, to support the accomplishment of this monumental task. Thus far we have grumbled about the lack of focus on reality in the laws that apply during a disaster event. Yet we as emergency managers have not made an effort to address the issue at the national level. We must shake off the shock effect we've encountered by recent events and insert ourselves, invited or not, into this process to address this issue head on. It is essential that we bring together organizations, agencies and partners to realistically address this issue, both legally and practically, with responsibility, pragmatism and good judgment.

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